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### UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-fifth session

#### SUMMARY RECORD OF THE 481st MEETING

Held at Headquarters, New York,  
on Wednesday, 13 May 1992, at 10 a.m.

Chairman:

Mr. ABASCAL ZAMORA

(Mexico)

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International payments: draft Model Law on International Credit Transfers  
(continued)

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- \* No summary record was issued for the 480th meeting.
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The meeting was called to order at 10.30 a.m.

INTERNATIONAL PAYMENTS: DRAFT MODEL LAW ON INTERNATIONAL CREDIT TRANSFERS  
(continued) (A/CN.9/XXV/CRP.2/Add.2)

1. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, referred the Commission to the report of the Drafting Group on the Model Law (A/CN.9/XXV/CRP.2/Add.2). The Drafting Group had decided that former article 18 should be inserted in the text as a footnote marked with an asterisk appearing after the title of chapter I. The text should be headed "Article X. Conflict of laws", and the phrase "for the purposes of article 4 (1)" in paragraph (2) should be deleted. It had also been decided to include article 17 as a footnote.
2. Mr. FUJISHITA (Japan) said that he did not oppose the text of article X, but felt that the wording of the footnote conveyed an implication that the Commission had been in favour of the adoption of the provision, whereas in fact a majority had opposed it. He therefore proposed that the wording at the beginning of the footnote should be changed to read: "The Commission suggests the following additional text for States that might wish to adopt it.".
3. Mr. DUCHEK (Austria) agreed that the wording might leave room for misinterpretation. He therefore supported the Japanese proposal, but felt that the Commission might go a little further by replacing the words "decided to provide" with the word "offers".
4. Mr. SCHNEIDER (Germany) and Mrs. FERNANDEZ DE GURMENDI (Argentina) supported the Japanese proposal.
5. The proposal was adopted.

6. The CHAIRMAN invited the Commission to consider the text article by article.

Article 1

7. Article 1 was adopted.

Article 2, paragraph (a)

8. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, noted that the Drafting Group had restored the wording of the beginning of paragraph (a) ("'Credit transfer' means ..."), which had previously appeared in the text.
9. Paragraph (a) was adopted.

Article 2, paragraph (b)

10. Paragraph (b) was adopted with minor drafting changes.

Article 2, paragraphs (c), (d) and (e)

11. Paragraphs (c), (d) and (e) were adopted.

Article 2, paragraphs (f) to (n)

12. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, pointed out that the Commission had deleted the text of paragraph (f) at its previous session; the Drafting Group had therefore added "[missing]" to indicate that fact. In paragraph (j), the words "an amendment or" had been added, and immediately after paragraph (j), a paragraph defining "banking day" had been added. In paragraph (k), the Drafting Group had deleted a phrase which had appeared in the earlier text.

13. Mr. LE GUEN (France) pointed out that in the French version of subparagraph (n), "valeur dans le temps" had been incorrectly changed to "valeur de rendement".

14. Paragraphs (f) to (n) were adopted.

Article 2 bis

15. Article 2 bis was adopted.

Article 3

16. Article 3 was adopted.

Article 4

17. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, pointed out that "amendment or" had been added in paragraphs (1), (2) and (5), and that paragraph (3) had been redrafted in line with the suggestions of the secretariat as contained in paragraph 47 of document A/CN.9/367. He explained that the purpose of the procedure referred to in paragraph (5) was to detect discrepancies, such as might arise, for example, from a mistake made by the sender or from some problem in transmission. The Drafting Group had felt that the word "error" alone might have narrowed the concept, and therefore "or discrepancy" had been added in several places.

18. Article 4 was adopted.

Article 5

19. Article 5 was adopted.

Article 6

20. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that the only change in article 6 was the addition of the word "or" for stylistic reasons at the end of paragraph (2) (d).

21. Article 6 was adopted.

Article 7

22. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that the Drafting Group had seen no way to shorten paragraph (3), but had made some changes in the interests of clarity. The beginning had been changed to read: "A receiving bank that determines ...", and various small alterations had been made to reflect that changed syntax. The phrase "before the end of the execution period" had been placed after "paragraph (2) if", and "in the light of the circumstances" had been deleted as redundant. In paragraph (5), "of this article" had been added to the end of the last sentence, in the interests of greater clarity.

23. Article 7 was adopted.

Article 8

24. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that the only change made in article 8 was the addition of "or" at the end of paragraph (1) (g).

25. Article 8 was adopted.

Article 9

26. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that the wording "that identifies the beneficiary" in paragraph (4) had been changed to "intended to identify the beneficiary", because the point of the paragraph was that the information did not, in fact, identify the beneficiary. In paragraph (5), "his" had been changed to "its".

27. Mr. SANDOVAL (Chile) said that in paragraph (3) "la cuantía de dinero" should be replaced by "la suma de dinero".

28. Article 9 was adopted.

Article 10

29. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that the changes made in paragraph (1) were based on the suggestions of the secretariat contained in document A/CN.9/367, but were not identical to them. The phrase "that is obligated to execute a payment order"

(Mr. Bergsten)

had been added, as article 10 covered only the time period within which an obligation had to be discharged, not the imposition of the obligation itself. The second sentence had been modified and split into two sentences. In subparagraphs (a) and (b), "order" had been changed to "payment order" several times; in subparagraph (b), "in which case" had been deleted and "the order shall be executed on that date" had been added.

30. Mr. SANDOVAL (Chile) pointed out a minor typographical error in the Spanish version of paragraph (1).

31. Mr. DE BOER (Observer for the Netherlands) asked whether article 10, as it stood, covered the situation in which the obligation of the bank arose later than the date of receipt.

32. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, explained that a receiving bank became obligated to execute a payment order because of its acceptance thereof, and from the moment of acceptance. But the point in time at which it was obligated to execute was determined by article 10. The time period ran not from acceptance, but from receipt. A situation in which acceptance occurred after receipt was covered by the first two sentences of article 10 (1). If acceptance occurred later, there was indeed a problem, which had been discussed at length in document A/CN.9/367.

33. Mr. DE BOER (Observer for the Netherlands) suggested that a wording might be found to cover the problem.

34. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, recalled that the problem raised by the observer for the Netherlands was one of the issues which the Commission had decided not to attempt to resolve. It was, in any event, likely to be a relatively rare situation.

35. Mr. LE GUEN (France) recalled that the delegation of France was firmly opposed to the substance of paragraph (1 bis), considering that the issue of execution for value was a purely contractual matter with which UNCITRAL should not have concerned itself. He wished to ensure that the views of his delegation were placed on record.

36. The CHAIRMAN said that those views would be placed on record.

37. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that paragraph (1 ter) had been modified in the light of the suggestions made by the secretariat in paragraph 36 of document A/CN.9/367.

38. Mr. LIM (Singapore) asked whether "banking day" should not be used in paragraphs (4) and (5) in place of "day the bank executes that type of payment" and "day it performs that type of action".

/...

39. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that that was a suggestion which had been made, but the Drafting Group had not made the change.

40. Mr. DE BOER (Observer for the Netherlands) asked, relative to paragraph (4), whether the Drafting Group had considered the relationship between the banking day and the cut-off time, and whether there could also be a cut-off time within a banking day.

41. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, referred to the definition of "banking day" in article 2. The question raised by the observer for the Netherlands had been discussed in the Drafting Group, which had recognized that in some banking systems, each new banking day began at a given time in the morning, while in others it began as soon as the preceding one ended at a given time in the evening. The problem was covered, at least partially, by the use of the phrase "that part of the day" in the definition.

42. Article 10 was adopted.

The meeting was suspended at 11.30 a.m. and resumed at noon.

Article 11, paragraph (1)

43. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that paragraph (1) incorporated the drafting changes which the Commission had agreed upon the previous week.

44. Paragraph (1) was adopted.

Article 11, paragraph (2)

45. Paragraph (2) was adopted.

Article 11, paragraph (3)

46. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that the text had been amended in accordance with the wishes of the Commission. The words "paragraphs (1) and (2)" should read instead "paragraph (1) or (2)".

47. Paragraph (3), as amended, was adopted.

Article 11, paragraph (4)

48. Paragraph (4) was adopted.

Article 11, paragraph (5)

49. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that the references to "beneficiary's bank" should be amended to read "beneficiary bank".

50. Paragraph (5), as amended, was adopted.

Article 11, paragraph (6)

51. Paragraph (6) was adopted.

Article 11, paragraphs (6 bis) and (6 ter)

52. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that a sentence had been added in square brackets at the end of paragraph (6 ter) to state explicitly the implicit provision that the paragraph did not apply to a bank if it would affect the bank's rights or obligations under any agreement or any rule of a funds transfer system.

53. Mr. BURMAN (United States of America) said that the bracketed text did not represent a substantive change, and merely served to clarify the position of the Drafting Group so as to prevent any possible misunderstanding at a later time.

54. The CHAIRMAN suggested that the square brackets should be deleted.

55. It was so decided.

56. Mr. BONELL (Italy) suggested that the sentence which concluded both paragraphs (6 bis) and (6 ter) should be moved to a separate paragraph in the article.

57. It was so decided.

58. Paragraphs (6 bis) and (6 ter), as amended, were adopted.

Article 11, paragraphs (7) to (9).

59. Paragraphs (7) to (9) were adopted.

Article 12

60. Mr. BERGSTEN (Consultant to the Secretariat), speaking as Chairman of the Drafting Group, said that the word "procedure" in the first sentence should be in the plural. The addition of the second sentence reflected the decision of the Drafting Group to state explicitly that a receiving bank's failure to fulfil its obligations under article 12 would not give rise to any liability.

61. Mr. DE BOER (Observer for the Netherlands) said that he could not recall a decision being taken by the Drafting Group to state that explicitly.

62. The CHAIRMAN said that during its consideration of the article the previous week, the Drafting Group had indeed taken a decision that the article would not give rise to any liability.

63. Mr. SCHNEIDER (Germany) said that he shared the reservations of the observer for the Netherlands with respect to article 12. The second sentence constituted a substantive provision on which there had been no conclusive discussion. It should therefore be omitted from the article.

64. Mr. LE GUEN (France) said that a distinction should be drawn between a decision not to provide sanctions and an explicit provision that no liability would arise if a receiving bank failed to comply with its obligations. He therefore shared the concerns of the representative of Germany and the observer for the Netherlands.

65. Mr. GREGORY (United Kingdom) said that the Commission had not reached any conclusion on the second sentence of article 12.

66. Mr. BONELL (Italy) said that the sentence made no sense whatsoever; he strongly urged the Commission to delete it.

67. Mr. EL-SHARKAWY (Egypt) proposed that, in the first sentence of article 12, the words "under a duty" should be replaced by "requested", and the second sentence should be deleted.

68. Mr. EWORE (Observer for Gabon), Mr. SAFARIAN NEMAT-ABAD (Islamic Republic of Iran) and Mr. BURMAN (United States of America) supported the proposal made by the representative of Egypt.

69. Ms. BUURE-HAGGLUND (Observer for Finland) said that the Egyptian proposal to amend the first sentence of article 12 would weaken the content of that article. In her opinion, the only correct way to proceed would be to delete the second sentence.

70. Mr. GREGORY (United Kingdom) said that his delegation agreed with the observer for Finland. Moreover, it was odd for a law to contain a request. He proposed that the Commission either should decide to delete the second sentence of article 12 or should reword the article to indicate that there was no liability.

71. Mr. CHATURVEDI (India) proposed that the Commission should delete the second sentence, leaving the first sentence intact.

72. Mr. GRIFFITH (Observer for Australia) suggested that the first sentence of article 12 should be amended to read: "Without giving rise to any liability, until the credit transfer is completed, each receiving bank should assist the originator ...". The second sentence should be deleted.

73. Mr. DUCHEK (Austria) said that the second sentence of article 12 was indeed very odd. A law that only requested something to be done was also quite unusual. The inclusion of such a provision in the Model Law would enable States that had always been sceptical about the Model Law to belittle its importance. The best solution would be to abide by the decision taken by the Commission at its previous session. Another solution would be to delete the second sentence.

74. Mr. DE BOER (Observer for the Netherlands), Mr. GREGORY (United Kingdom) and Mr. HOLEC (Czechoslovakia) supported the Australian suggestion.

75. Mr. LOJENDIO (Spain) said that the Spanish text of the first sentence of article 12 presented fewer problems than did the English text. He was in favour of retaining the first sentence as it stood, at least in the Spanish version, and deleting the second sentence.

76. Mr. FUJISHITA (Japan) said that his delegation could support either the Egyptian or the Australian formula.

Article 13, paragraphs (1) to (3)

77. Paragraphs (1) to (3) were adopted.

Article 13, paragraphs (4) and (5)

78. Mr. BONELL (Italy) suggested that the sentence which concluded both paragraphs (4) and (5) should be moved to a separate paragraph in the article.

79. It was so decided.

80. Paragraphs (4) and (5), as amended, were adopted.

The meeting rose at 1 p.m.